

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SEMICAPS PTE LTD.,

Plaintiff,

v.

HAMAMATSU CORPORATION, et al.,

Defendants.

Case No. 17-cv-03440-DMR

PROTECTIVE ORDER

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

**2. DEFINITIONS**

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

1           2.4    Designating Party: a Party or Non-Party that designates information or items that it  
2 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
4 CODE.”

5           2.5    Disclosure or Discovery Material: all items or information, regardless of the  
6 medium or manner in which it is generated, stored, or maintained (including, among other things,  
7 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
8 responses to discovery in this matter.

9           2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to  
10 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
11 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
12 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
13 or of a Party's competitor.

14           2.7    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
15 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
16 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
17 less restrictive means.

18           2.8    “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
19 extremely sensitive “Confidential Information or Items” representing computer code and  
20 associated comments and revision histories, formulas, engineering specifications, or schematics  
21 that define or otherwise describe in detail the algorithms or structure of software or hardware  
22 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
23 serious harm that could not be avoided by less restrictive means.

24           2.9    House Counsel: attorneys who are employees of a party to this action. House  
25 Counsel does not include Outside Counsel of Record or any other outside counsel.

26           2.10   Non-Party: any natural person, partnership, corporation, association, or other legal  
27 entity not named as a Party to this action.

28           2.11   Outside Counsel of Record: attorneys who are not employees of a party to this

1 action but are retained to represent or advise a party to this action and have appeared in this action  
 2 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

3 2.12 Party: any party to this action, including all of its officers, directors, employees,  
 4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 6 Material in this action.

7 2.14 Professional Vendors: persons or entities that provide litigation support services  
 8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
 9 organizing, storing, or retrieving data in any form or medium) and their employees and  
 10 subcontractors.

11 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
 12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
 13 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

14 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 15 Producing Party.

### 16 **3. SCOPE**

17 The protections conferred by this Order cover not only Protected Material (as defined  
 18 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
 19 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,  
 20 or presentations by Parties or their Counsel that might reveal Protected Material. However, the  
 21 protections conferred by this Order do not cover the following information: (a) any information  
 22 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
 23 public domain after its disclosure to a Receiving Party as a result of publication not involving a  
 24 violation of this Order, including becoming part of the public record through trial or otherwise;  
 25 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the  
 26 Receiving Party after the disclosure from a source who obtained the information lawfully and  
 27 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at  
 28 trial shall be governed by a separate agreement or order.

#### 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

#### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but  
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
4 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
5 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
6 protected material. If only a portion or portions of the material on a page qualifies for protection,  
7 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
8 appropriate markings in the margins) and must specify, for each portion, the level of protection  
9 being asserted.

10 A Party or Non-Party that makes original documents or materials available for inspection  
11 need not designate them for protection until after the inspecting Party has indicated which  
12 material it would like copied and produced. During the inspection and before the designation, all  
13 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
15 copied and produced, the Producing Party must determine which documents, or portions thereof,  
16 qualify for protection under this Order. Then, before producing the specified documents, the  
17 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE”) to each page that contains Protected Material. If only a portion or portions of the  
20 material on a page qualifies for protection, the Producing Party also must clearly identify the  
21 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
22 each portion, the level of protection being asserted.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
24 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
25 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
26 impractical to identify separately each portion of testimony that is entitled to protection and it  
27 appears that substantial portions of the testimony may qualify for protection, the Designating  
28 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)

1 a right to have up to 21 days to identify the specific portions of the testimony as to which  
 2 protection is sought and to specify the level of protection being asserted. Only those portions of  
 3 the testimony that are appropriately designated for protection within the 21 days shall be covered  
 4 by the provisions of this Protective Order. Alternatively, a Designating Party may specify, at the  
 5 deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript  
 6 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 7 ONLY.”

8 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,  
 9 or other proceeding to include Protected Material so that the other parties can ensure that only  
 10 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
 11 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
 12 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
 13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on the title page  
 15 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
 16 pages (including line numbers as appropriate) that have been designated as Protected Material and  
 17 the level of protection being asserted by the Designating Party. The Designating Party shall  
 18 inform the court reporter of these requirements. Any transcript that is prepared before the  
 19 expiration of a 21-day period for designation shall be treated during that period as if it had been  
 20 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
 21 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
 22 actually designated.

23 (c) for information produced in some form other than documentary and for any other  
 24 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
 25 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
 26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
 27 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection,  
 28 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify

1 the level of protection being asserted.

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
3 designate qualified information or items does not, standing alone, waive the Designating Party's  
4 right to secure protection under this Order for such material. Upon timely correction of a  
5 designation, the Receiving Party must make reasonable efforts to assure that the material is  
6 treated in accordance with the provisions of this Order.

## 7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
9 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
13 original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
15 process by providing written notice of each designation it is challenging and describing the basis  
16 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
17 notice must recite that the challenge to confidentiality is being made in accordance with this  
18 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
19 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
20 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
21 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
22 designation was not proper and must give the Designating Party an opportunity to review the  
23 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
24 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
25 stage of the challenge process only if it has engaged in this meet and confer process first or  
26 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
27 a timely manner.

28 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court

1 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
 2 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
 3 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
 4 process will not resolve their dispute, whichever is earlier. Each such motion must be  
 5 accompanied by a competent declaration affirming that the movant has complied with the meet  
 6 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
 7 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
 8 shall automatically waive the confidentiality designation for each challenged designation. In  
 9 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
 10 time if there is good cause for doing so, including a challenge to the designation of a deposition  
 11 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
 12 accompanied by a competent declaration affirming that the movant has complied with the meet  
 13 and confer requirements imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 15 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 16 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 17 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 18 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 19 material in question the level of protection to which it is entitled under the Producing Party's  
 20 designation until the court rules on the challenge.

## 21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 25 the categories of persons and under the conditions described in this Order. When the litigation has  
 26 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
 27 DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and



1 in a secure manner that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
3 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
4 information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
7 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
8 Bound” that is attached hereto as Exhibit A;

9 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
10 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
13 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
14 Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, and  
17 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
18 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
20 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
21 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
22 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
23 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
24 Protective Order.

25 (g) the author or recipient of a document containing the information or a custodian or  
26 other person who otherwise possessed or knew the information.

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
28 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise

ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)

1 identifies each person or entity from whom the Expert has received compensation or funding for  
2 work in his or her areas of expertise or to whom the expert has provided professional services,  
3 including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6)  
4 identifies (by name and number of the case, filing date, and location of court) any litigation in  
5 connection with which the Expert has offered expert testimony, including through a declaration,  
6 report, or testimony at a deposition or trial, during the preceding five years.

7 (b) A Party that makes a request and provides the information specified in the  
8 preceding respective paragraphs may disclose the subject Protected Material to the identified  
9 Expert unless, within 14 days of delivering the request, the Party receives a written objection  
10 from the Designating Party. Any such objection must set forth in detail the grounds on which it is  
11 based.

12 (c) A Party that receives a timely written objection must meet and confer with the  
13 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
14 agreement within seven days of the written objection. If no agreement is reached, the Party  
15 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
16 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court  
17 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
18 reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
19 disclosure would entail, and suggest any additional means that could be used to reduce that risk.  
20 In addition, any such motion must be accompanied by a competent declaration describing the  
21 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and  
22 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal  
23 to approve the disclosure.

24 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
25 \_\_\_\_\_

26  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
28 Expert should provide whatever information the Expert believes can be disclosed without violating any  
confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with  
the Designating Party regarding any such engagement.

burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

### **8. PROSECUTION BAR**

Absent written consent from the Producing Party, any individual who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications relating to the subject matter of this action, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.<sup>2</sup> To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information is first received by the affected individual and shall end two (2) years after final termination of this action.

### **9. SOURCE CODE**

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE CODE" if it comprises or includes confidential, proprietary or trade secret source code.

(b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information, including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL –

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<sup>2</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and  
2 7.4.

3 (c) Any source code produced in discovery shall be made available for inspection, in a  
4 format allowing it to be reasonably reviewed and searched, during normal business hours or at  
5 other mutually agreeable times, at an office of the Producing Party's counsel or another mutually  
6 agreed upon location. The source code shall be made available for inspection on a secured  
7 computer in a secured room without Internet access or network access to other computers, and the  
8 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto  
9 any recordable media or recordable device. The Producing Party may visually monitor the  
10 activities of the Receiving Party's representatives during any source code review, but only to  
11 ensure that there is no unauthorized recording, copying, or transmission of the source code.

12 (d) The Receiving Party may request paper copies of limited portions of source code  
13 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
14 other papers, or for deposition or trial, but shall not request paper copies for the purpose of  
15 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
16 instance. The Producing Party shall provide all such source code in paper form, including bates  
17 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." The Producing Party  
18 may challenge the amount of source code requested in hard copy form pursuant to the dispute  
19 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the  
20 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute  
21 resolution.

22 (e) The Receiving Party shall maintain a record of any individual who has inspected  
23 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
24 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
25 Party shall not create any electronic or other images of the paper copies and shall not convert any  
26 of the information contained in the paper copies into any electronic format. The Receiving Party  
27 shall only make additional paper copies if such additional copies are (1) necessary to prepare  
28 court filings, pleadings, or other papers (including a testifying expert's expert report), (2)

1 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
 2 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
 3 and must not be given to or left with a court reporter or any other unauthorized individual.

4 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 5 **OTHER LITIGATION**

6 If a Party is served with a subpoena or a court order issued in other litigation that compels  
 7 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
 8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
 9 – SOURCE CODE,” that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification shall include a  
 11 copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
 13 the other litigation that some or all of the material covered by the subpoena or order is subject to  
 14 this Protective Order. Such notification shall include a copy of this Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 16 Designating Party whose Protected Material may be affected.<sup>3</sup>

17 If the Designating Party timely seeks a protective order, the Party served with the  
 18 subpoena or court order shall not produce any information designated in this action as  
 19 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
 20 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
 21 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
 22 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
 23 court of its confidential material – and nothing in these provisions should be construed as  
 24 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
 25 another court.

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26  
 27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to  
 28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from  
 which the subpoena or order issued.

**11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>4</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

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<sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 Material to any person or in any circumstance not authorized under this Protective Order, the  
4 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
7 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
8 Be Bound” that is attached hereto as Exhibit A.

9 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
10 PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
14 provision is not intended to modify whatever procedure may be established in an e-discovery  
15 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
16 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
17 communication or information covered by the attorney-client privilege or work product  
18 protection, the parties may incorporate their agreement in a stipulated protective order submitted  
19 to the court.

20 **14. MISCELLANEOUS**

21 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
22 seek its modification by the court in the future.

23 14.2 Right to Assert Other Objections. No Party waives any right it otherwise would  
24 have to object to disclosing or producing any information or item on any ground not addressed in  
25 this Protective Order. Similarly, no Party waives any right to object on any ground to use in  
26 evidence of any of the material covered by this Protective Order.

27 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
28 laws and regulations relating to the export of technical data contained in such Protected Material,  
including the release of such technical data to foreign persons or nationals in the United States or



1 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
2 data, and the Receiving Party shall take measures necessary to ensure compliance.

3       14.4 Filing Protected Material. Without written permission from the Designating Party  
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
5 the public record in this action any Protected Material. A Party that seeks to file under seal any  
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
8 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
9 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
10 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
11 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
12 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
13 79-5(e)(2) unless otherwise instructed by the court.

#### 14 **15. FINAL DISPOSITION**

15       Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
16 Receiving Party must return all Protected Material to the Producing Party or destroy such  
17 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
18 compilations, summaries, and any other format reproducing or capturing any of the Protected  
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
20 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
21 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
22 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
23 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
27 product, and consultant and expert work product, even if such materials contain Protected  
28 Material. Any such archival copies that contain or constitute Protected Material remain subject to

1 this Protective Order as set forth in Section 4 (DURATION).

2 **IT IS SO ORDERED.**

3 DATED: \_\_\_\_\_

4 \_\_\_\_\_  
The Honorable Donna M. Ryu  
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Protective Order that was issued by the United  
States District Court for the Northern District of California on \_\_\_\_\_ [date] in the  
case of *Semicaps Pte Ltd. v. Hamamatsu Corporation et al*, Case No. 4:17-cv-03440 (N.D. Cal.).  
I agree to comply with and to be bound by all the terms of this Protective Order, and I understand  
and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Protective Order to any person or entity except in strict compliance  
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Northern District of California for the purpose of enforcing the terms of this Protective Order,  
even if such enforcement proceedings occur after termination of this action.

I hereby appoint [print or type full name] of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address and telephone number] as my California  
agent for service of process in connection with this action or any proceedings related to  
enforcement of this Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed:

\_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]